

EMPLOYMENT TERMINATION CHECKLIST

A. Hiring Practices

- _____ Are you making unwarranted promises regarding job security during the hiring process?
- _____ Do you have new employees sign confidentiality agreements and/or covenants not to compete?
- _____ Are your wages and overtime payments in compliance with the Fair Labor Standards Act and the Equal Pay Act?

B. Employment Policies and Work Rules

- _____ Do you have an employee handbook with appropriate disclaimers?
- _____ Have your employees acknowledged (in writing) receipt of the handbook and its updates?
- _____ Do you have a progressive disciplinary action policy and is it followed by management?
- _____ Are there established procedures for supervisors to follow in administering your policies and have they been trained in these procedures?
- _____ Is supervisory discipline adequately monitored by members of management?
- _____ Do you follow the termination/severance provisions of your employee handbook?
- _____ Do you have a policy defining job abandonment and its consequences?
- _____ Do you have a policy on severance pay? On rehiring? On handling reference requests?
- _____ Do you have a policy stipulating the employer's right to place a resigning employee on paid leave during the employee's notice period?

C. Documentation

- _____ Do supervisors regularly maintain *behavioral* incident logs?
- _____ Have verbal warnings or counselings been recorded in employee personnel files?
- _____ Are forms available for written warnings and have supervisors been trained in their use?

- _____ Have written warnings been discussed with employees and been acknowledged and signed?
- _____ Are employees' performance regularly evaluated with the review documented in writing?
- _____ Are employees shown their evaluations and given a chance to comment on them in writing?
- _____ Have your forms been reviewed by an attorney for objectivity and legality?
- _____ Have supervisors been trained in the use of evaluation forms?
- _____ Are evaluations reviewed at higher levels and monitored in a centralized manner for discriminatory impact or erratic evaluation patterns?

D. Investigating Offenses

- _____ Do you have a policy that differentiates offenses which are immediately terminable from those for which investigations will be conducted?
- _____ Do you have a policy and forms for conducting disciplinary investigations?
- _____ If so, are these policies followed?
- _____ If so, are supervisors trained in the policies and in how to conduct an investigation?
- _____ Do you always have another manager present when talking to an employee regarding serious discipline issues?
- _____ Do you give the employee the chance to present his/her side of the story?

E. Determining Whether to Terminate

- _____ Does management have a legitimate, non-discriminatory and behaviorally substantiated reason for the termination?
- _____ Does management's documentation (including the performance appraisals) support the non-discriminatory and behaviorally substantiated reason for termination?
- _____ Has the employee been counseled in order to get his/her side of the story?
- _____ Have any/all potential witnesses been consulted?

- _____ Is the employee being treated in a manner consistent with your employee handbook or other established policies?
- _____ Have specific rule violations been identified and have disciplinary procedures been followed?
- _____ Does the employee know that termination is being considered and that his/her employment is in jeopardy?
- _____ Have any other employees who have committed the same offense been treated differently? If so, what is different about this employee's behavior?
- _____ If the employee has complained of discrimination, harassment or failure to accommodate a disability, have such complaints been properly addressed?
- _____ Does the discharge appear to be in retaliation for any previously filed discrimination claim or charge?
- _____ Does the discharge violate the National Labor Relations Act or any public policies with regard to such matters as "whistle-blowing"?
- _____ Are you prepared to discuss the decision with the employee, without overstating or understating the reasons for the termination and being sure to avoid false, misleading or inconsistent statements by management?
- _____ Have you contacted an employment attorney to review and advise on your termination decision before implementing it?

F. Conducting the Termination

- _____ Have you truthfully stated the basis for the decision, without misstating (either over- or under-stating) the reason for termination?
- _____ Do you have an exit checklist?
- _____ Do you have COBRA or state benefits continuation forms?
- _____ Have you anticipated the employee's reaction(s) and responded appropriately?
- _____ Have you implemented the necessary and appropriate security measures for the termination meeting, gathering the employee's personal belongings and departing from the premises?
- _____ Do you have another management witness present when the decision is communicated?

_____ Have you complied with applicable wage payment laws, severance policies, benefits administration and insurance law requirements?

_____ Have you considered providing post-termination benefits in return for a release?

G. Post Termination Considerations

_____ Have you followed your reference policy, if applicable?

_____ Do you give “neutral” and “behavioral” references regarding former employees in order to avoid charges of defamation and/or discrimination?

_____ Do you have a procedure for notifying staff, members and other appropriate personnel of the employee’s departure and for discussing how the departed employee’s work and incoming calls will be handled?

_____ Have you counseled supervisors and others not to violate your organization’s reference policy and thereby protect your organization and the supervisors from legal vulnerability?

_____ Have you taken the necessary steps to prevent the loss of your organization’s property and proprietary information?

_____ Have you retained personnel records as required by law and your organization’s policy?

_____ Do you have a plan for the timely replacement of the individual?

_____ Have you considered whether a discharged employee who is in a “protected” class can be replaced by a qualified individual in the same class and at the same salary?

_____ Have you reviewed applicable laws and policies and/or retained counsel to deal with inquiries from unemployment compensation agencies?